

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1091 OF 2019

1. Amol s/o Yuvraj Gund
Age: 30 years, Occu- Agril.
2. Yuvraj s/o Trimbak Gund
Age: 71 years, Occ- Agril.
3. Shobha Yuvraj Gund
Age: 62 years, Occu- Household,
All R/o. Padoli, Taluka & District-
Osmanabad.

...APPELLANTS

Versus

The State Of Maharashtra

...RESPONDENT

Mr. S.J. Salunke h/f. Mr. Vivek Deshmukh, Advocate for appellants.

Mr. A.V. Deshmukh, APP for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th FEBRUARY, 2023

JUDGMENT:

1. The appellants are convicted by learned Additional Sessions Judge, Osmanabad under section 498-A read with 34 of the Indian Penal Code (for short 'IPC') and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 3,000/- each, under section 307 read with 34 of IPC and sentenced to suffer rigorous imprisonment for ten years and pay fine of Rs. 5,000/- each and under section 504 read with 34 of

IPC and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/- each.

2. Prosecution case in brief is that, injured informant is married with Amol Gund on 30.04.2015. In the marriage her parents gave Rs. 2,51,000/- dowry, 5 tola gold, Rs. 10,000/- towards clothes and one motorcycle. Accused No. 2- Yuvraj Gund and Accused No. 3- Shobha Gund are in-laws of informant. After marriage she was treated well for one month. Thereafter, demand of Rs. 1,00,000/- was raised by in-laws. For that purpose she was physically and mentally ill treated. When informant called her father and told him about demand of Rs. 1,00,000/-, her father came to village Padoli and convinced her in-laws for treating informant well. Thereafter, on 04.03.2016, informant was driven out of the house. She called her parents and on 05.03.2016 her father, two uncles, Rambhau Gund (mediator) and in-laws had discussion. However, in-laws were not ready to listen any of the pleadings of her maternal side. Thereafter at Padoli out post in presence of police authorities informant as well as husband Amol Gund both in writing agreed to co-habit properly, without making any complaint against each other.

3. On 06.03.2016, informant and her mother-in-law went to harvest sweet potatoes in the agricultural field. Her husband and father-in-law were already there. At 7.00 pm, in the evening she was abused that she has not properly harvested the sweet potatoes. Mother-in-law and father-in-law caught hold of her hands and made her fall in the sugarcane field and husband assaulted on the head of informant with stone. She became unconscious. Thereafter, after 7-8 days she regained her consciousness. She was admitted in Sahyadri Super Specialty Hospital, Latur. Thereafter, her statement was recorded by police and on that basis Crime No. 40/2016, under section 307, 498(A) read with 34 of IPC, is registered. After completion of investigation charge sheet was filed and the case was committed to the Sessions Court.

4. Accused were charged under sections 307, 498(A), 504 read with 34 of IPC. In support of its case, prosecution has examined 11 witnesses. Defence of the accused as is disclosed from the manner of cross examination and in statement under section 313 Cr.P.C., is that informant went to attend nature's call in sugarcane field. She must have slipped and hit her head on the stone. Since she did not return for a considerable period,

accused went in the sugarcane field and saw her lying unconscious. Therefore, accused Amol Gund brought ambulance from village Padoli and then all three accused with the help of villagers took her to the Civil Hospital, Osmanabad. At that time, their clothes were stained with blood.

5. Heard the learned advocate for the accused and learned Additional Public Prosecutor for respondent.

6. Learned advocate for accused submits that there is defect in framing of charge which has caused prejudice to the accused. Prosecution has failed to prove charge under section 498-A IPC as evidence of PW1 and PW3 is inconsistent. He submits that as per the writing executed before the police, Padoli outpost, at (Exhibit-32 and 33) there were minor differences between accused and PW3 and they both undertook not to quarrel and complain again. Since informant PW3 had shown her willingness for co-habitation she must be held to have given up her allegations of 498-A IPC. He therefore, submits that quarrel in the nature of domestic reason does not constitute offence under section 498-A and compromise between husband and wife condones the alleged ill treatment. In support of these submissions he relied on Anandrao Janardan Hiware vs. The

State of Maharashtra, 2017 ALL MR (Cri) 3436 3436. Further submission is single incident of beating by husband does not amount to cruelty and section 498-A requires consistent harassment. In this behalf he relied *The State of Maharashtra vs. Chagan Kannu Bankar*, 2016 ALL MR (Cri) 5042.

7. He submits that there is inordinate unexplained delay in lodging FIR. Alleged incident is dated 06.03.2016 at 8.30 pm. As per PW3 she regained consciousness on 14.03.2016. However, her statement was recorded on 20.03.2016. She has admitted that she did not disclose alleged incident to anybody till recording of her statement on 20.03.2016. There is no eye witness to the incident. Statement of injured was recorded after 14 days of incident. FIR is lodged by (PW1) father of injured, who had not seen the incident. These circumstances render the prosecution case doubtful.

8. He further submits that material witnesses are not examined particularly police Patil of village Padoli from whom PW9 Rambhau came to know about assault on PW3. PW9 informed the incident to (PW1) father of Rohini who has lodged the FIR (Exhibit-18). Though police Patil was alive and was residing in the village, he is deliberately not examined by the

prosecution. Therefore, adverse inference needs to be drawn against the prosecution.

9. He submits that defence of the accused is probable and it has not been considered by the Trial Court in the proper perspective. According to him, defence of the accused that PW3 suffered injuries due to accidental fall is probable. Medical Officer has admitted that injuries noted in the medical certificate Exhibit-39 may be possible, if a person falls on a stone. He submits that defence of the accused under section 313 Cr.P.C., must be considered by the Court, by relying on *Reena Hazarika vs. State of Assam*, AIR 2018 Supreme Court 5361.

10. He further submits that there is no evidence against accused No. 2 and 3 to sustain their conviction. In the FIR it is not mentioned that accused No. 2 and 3 caught hold of hands of PW3 at the time of incident. In CA report no blood stains are seen on the clothes of accused No. 2 and 3. He submits that there is serious procedural illegality committed by the Trial Court while recording statement of accused under section 313 Cr.P.C. No specific questions about chemical analyzer's report was asked to the accused persons and their explanation is not sought. Composite questions were put which has caused serious

prejudice to the accused. By relying on *Naval Kishor Singh vs. State of Bihar*, AIR 2004 Supreme Court 4421 he submits that the Apex Court has deprecated the practice of putting entire evidence against accused together in a single question.

In the alternate, by relying on *Shanabhai Dhulabhai Parmar vs. State of Gujarat*, AIR 1977 Supreme Court 1338 and *Baj Singh vs. State of Punjab*, 1995 Supreme Court 1953, he submits that accused may be released on sentence already undergone and sentence of 10 years rigorous imprisonment is harsh and excessive. He also relied on *Harbeer Singh Vs. Sheeshpal and Ors*, AIR 2016 SC 4958 and *Takhaji Hiraji Vs. Thakore Kubersing*, AIR 2001 Supreme Court 2328 in support of his arguments.

11. Per contra learned Additional Public Prosecutor supports the impugned judgment and order by pointing out statements of accused recorded under section 313 Cr.P.C. He submits that entire evidence against the accused was put in separate questions and hence there is no substance in the contention of the accused that prejudice was caused by asking composite questions. By pointing out para 24 from the impugned judgment he submits that evidence is properly considered by the

Trial Court. He submits that accused persons did not admit (PW3) Rohini in the hospital and it is PW9 who has admitted her in Civil Hospital this circumstance needs to be held against the accused persons. By relying on spot panchnama and evidence of Rohini (PW3) he submits that stone used in the assault was found lying behind Rohini. Medical Officer has confirmed that total nine injuries found on the head of PW3, were possible by stone. Out of nine injuries injuries No. 1 to 6 are grievous. He further submits that compromise between accused No. 1 Amol and PW3 was due to police intervention and evidence indicates that Amol was not willing to co-habit with PW3. It was PW3 who was ready and willing to co-habit with accused Amol. In that view of the matter, she had no occasion to falsely implicate the accused persons in the present crime. He further submits that the prosecution has proved the offence beyond reasonable doubt and the Trial Court was justified in convicting the accused persons.

12. Heard the learned advocate for the accused and learned Additional Public Prosecutor at length, perused the record and the rulings cited.

13. PW3 Rohini is the injured eye witness. She has deposed in her evidence that accused No. 1 Amol is her husband. Accused No. 2 and 3 are her in-laws. Her marriage with accused No. 1 took place on 30.04.2015. Her parents offered cash of Rs. 2,51,000/-, five tola gold, cash of Rs. 10,000/- for dress and motorcycle to accused No. 1. After marriage, she started residing with accused persons. She was treated nicely for one month and thereafter accused subjected her to harassment for demand of Rs. 1,00,000/- for traditional custom known as Gharghusni (first visit of son-in-law to his father-in-law's house). Accused used to beat her for said reason and threatened her with life. She informed the same to her father on phone. Her father came to her matrimonial home and convinced the accused. He then took her to her parental home. She informed the ill treatment at the hands of accused to her uncle, aunt and friends. Thereafter, her father dropped her to matrimonial home. Accused again continued the harassment. She has therefore again called her father and informed the same.

14. On 04.03.2016, accused persons abused her, assaulted her and drove her out of the house. She informed the

same to her father on phone. On 05.03.2016, her father, two uncles and two cousins came to her matrimonial home at Padoli. There were deliberations amongst them, accused, Rambhau, grand father of accused No. 1 and his maternal uncle. Accused were adamant that they did not want PW3 to cohabit with accused No. 1. Her father, therefore started taking her to maternal home. He took her to outpost Padoli which is within the jurisdiction of Bembli Police Station. Police called accused through Rambhau Gund and Waman Gite. Mediator brought accused No. 1 and 2. After discussion in the police station accused No. 1 agreed to take her for co-habitation in the presence of mediator and police. Informant and accused No. 1 executed documents (Exhibit-32 and 33). After executing the documents, accused No. 1 took her to her matrimonial home. On 06.03.2016, she along with accused No. 3, mother-in-law went in the field to uproot the sweet potatoes. Husband accused No. 1 and father-in-law/Accused No. 2 had already gone to the field before them. In the evening accused abused her saying that she was not doing her work properly. When she was standing near the bullock cart both her in-laws caught hold of her hands and made her fall down on stubble of sugarcane. Accused No. 1 hit stone on her right side of head. She became unconscious. She

regained consciousness in Sahyadri Hospital after 7-8 days. Accused therefore attempted to commit her murder for unlawful demand.

15. In cross examination she admitted that she and accused No. 1 had been to the out post Padoli, one day before the incident and her father and maternal uncle accompanied them. Rambhau (mediator) was also present. She further admitted that on the same day police got the dispute between herself and accused No. 1 compromise and reduced it in writing and that at that time accused No. 1 insisted to co-habit with her following her pregnancy. When she was admitted to hospital at Latur, she was pregnant of three months. After her discharge from the hospital, she suffered miscarriage after 2-4 days therefrom. She further admitted that police recorded her statement after 10-12 days after she regained consciousness in the hospital at Latur. She admitted that her father, maternal uncle and others were present in the hospital. She further disclosed that she did not disclose anything about incident either to her father or maternal uncle, until recording of her statement by the police. She also admitted that she has filed maintenance petition against accused No. 1, in the Family Court at Latur. She

denied the suggestion given to her that she did not intent to lead marital life with accused No. 1 being highly qualified than accused No. 1 and she is reluctant to work in the field. She denied the suggestion that she was giving false evidence as per statement of her father and uncle and she did not want to co-habit with accused and therefore she made up a story of abortion. She further denied that she suffered head injury due to fall as she slipped in the sugarcane field.

16. PW2 Dr. Bharat Fadkar is the medical officer at Civil Hospital, Osmanabad, who examined PW3 on 06.03.2016 at about 10.10 pm and he found following injuries on her person.

(i) 7-CLW of 3x1x½ cm on right temporal parietal area, simple in nature.

(ii) 8-CLW of 3x2x1 cm over right mastoid process of simple nature.

(iii) 9- Abrasion of size 2x ½ cm over right ear, simple in nature.

All injuries were caused by hard and blunt object and within 23 hours. He advised the patient for CT scan. He received report of CT scan and found internal six injuries as follows:

(i) Hair line fracture over right temporal bone.

(ii) communicated displaced fracture on right temporal region.

- (iii) Displaced fracture on right parietal bone.
- (iv) Displaced fracture on occipital bone.
- (v) Nemo paleface over right parietal region.
- (vi) Scalp heametoma with foci of air within on right temporal bone.

All injuries were grievous in nature, caused by hard and blunt object and age of injuries was within 24 hours. The external and internal injuries were corresponding to each other. He issued medical certificate (Exhibit-25). He stated that patient had sustained injury to her internal side of brain. He opined that injuries noted above may be possible by stone, muddemal article no. 8. These injuries were sufficient in ordinary course of nature to cause death of a person. On 07.03.2016 he referred the patient to higher center Solapur at about 6.00 am.

17. In cross examination he admitted that Rambhau Gund had given the case history. He denied the suggestion that injures noted in the medical certificate are not possible by edged stone. He denied the suggestion that the injuries may be possible if the person falls on the edged stone.

18. PW4 Dr. Hanmant Kinikar is the private practitioner at Sahyadri Hospital, Latur who had examined PW3 as she was

admitted to hospital on 22.03.2016. She was unconscious and irritable. One Ramakant Narwade gave alleged history of assault.

On her examination he found following injuries:

1. CLW on occipital right temporal region of 3x2x1 cm.
2. Small contusion over occipital region.
3. Abrasion on right side of neck and ear.
4. CLW on right mastoid region of size 3x2x1 cm.

He advised the patient CT scan of brain. In CT scan report following injuries were noticed:

1. Contusion on Right temporal region-hemorrhagic.
2. Fracture on right temporal bone which was minimally displaced.
3. Fracture of right parietal and occipital bone.

External injuries were corresponding to internal injuries and internal injuries were grievous in nature. Age of injuries was less than 24 hours and they were caused by hard and blunt object. He accordingly issued medical certificate (Exhibit-39). He placed on record Sonography report (Exhibit-40/1) which revealed that PW3 was then 13 weeks pregnant. He further stated that injuries mentioned in the medical certificate(external and internal) are sufficient in ordinary course of nature to cause

death of a person and these injuries are may be possible by muddemal article No. 8 i.e. stone.

19. He further deposed that after admission of PW3 in the hospital, Bembli police made correspondence to him for recording statement of patient. He was asked whether the patient was in a position to give statement. He gave endorsement on letter dated 07.03.2016 (Exhibit-41) that patient was not able to make statement. He has further stated that at the relevant time he and his assistance Dr. Ganesh Shelke (PW5). had examined the patient. The signature underneath the endorsement was of Dr. Shelke. On 20.03.2016 police again issued letter asking him whether the patient was conscious to give statement. On the said letter endorsement is given by Dr. S.R. Futane that patient is able to give statement. At that time he and Dr. Futane had examined the patient. He identified the signature of Dr. Futane in the official capacity and the letter is marked as Exhibit-42. He and Dr. Futane had examined patient before and after recording her statement by the police. According to him, PW3 was conscious oriented at the time of giving statement.

20. In cross examination he admitted that Ramakant Nalwade who gave alleged history of assault his her uncle. He admitted that patient had undergone CT scan in another hospital. He did not inform Bembli Police station as to admission of patient in his hospital. Patient regained consciousness on 14.03.2016 and his hospital did not inform police about regaining consciousness by patient on 14.03.2016. Police recorded statement of patient on 20.03.2016. Patient did not undergo medical termination of pregnancy till she was admitted to his hospital on 22.03.2016.

21. He further deposed that patient sustained injuries on right side of her body. Except a single injury on occipital region, all injuries noted in medical certificate (Exhibit-39) may be possible if a person falls on stone, while on foot, over the residue of sugarcane abruptly. He do not have knowledge about result of pregnancy of patient.

22. Dr. Ganesh Shelke is examined as PW5. He has stated in his evidence that he was attached to Sahyadri Super Specialty Hospital at Latur since 2012. On 09.03.2016 he was on duty and PW3 was admitted to the hospital. His hospital received letter (Exhibit-41) dated 07.03.2016 from Bembli Police Station

seeking information as to whether Rohini was conscious, oriented and that they want to collect her blood sample. He along with Dr. Kinikar (PW4) on examination found that patient was not conscious and oriented to give statement. Accordingly, he made endorsement on letter (Exhibit-41) which is marked as Exhibit-47. He collected blood sample of patient on 09.03.2016 and handed it over to the police station in sealed condition, with letter dated 09.03.2016 (Exhibit-48).

23. Dr. Sonali Futane is examined as PW6 who made endorsement to letter (Exhibit-42) about conscious oriented condition of PW3 to give statement. First endorsement by her on the top of paper is at Exhibit-53. It was made after examining the patient. After recording of statement of patient, she made endorsement (Exhibit-54) at the bottom of paper, with her signature and seal of hospital. She denied the suggestion that endorsement at Exhibit-53 and 54 were made by her without examining the patient.

24. PW7 Sachin Saudagar is panch to the spot panchnama (Exhibit-60). In 2016 he was posted to PHC Takali Bembli under control of Padoli. On 07.03.2016 his senior called him and asked to assist police for panchnama. One Wadwale was

another panch. They went to the spot with police. One Rambhau had shown spot of incident. It was located in the land Gut No. 137 of accused No. 1 at village Padoli. They found stubble in the field of accused No. 1. The stubble and residue of sugarcane were smeared with colour like blood. They also spotted blood over the soil. A zoomka (gold ear ornament) was found lying on the spot. A stone stained with blood was lying on the spot. Police seized 7-8 articles in their presence. Police had taken out seven photos of scene of offence.

25. In cross examination he deposed that spot of incident was of a standing sugarcane field, however, no sugarcane crop was standing at that time. The stubble and residue of sugarcane were lying in the field. The furrows of sugarcane were laid in the field. Article stone was lying in furrow. The stone was stained with blood. Village Padoli is about 7-8 km from the spot of incident, if one proceeds by road and 4-5 km if approach by internal road. He admitted that there are houses of adjoining land owners.

26. PW8 Mahesh Gojamgunde is panch to the panchnama (Exhibit-63) of seizure of clothes of injured (PW3). He has proved panchnama (Exhibit-63).

27. PW10 Virbhadra Shiral who was panch to seizure of clothes of accused has turned hostile.

28. PW1 Suryakant Narwade is father of injured (PW3). He has stated that Rohini married with Amol in the year 2015 and he had paid Rs. 2,51,000/- cash, Rs. 10,000/- for clothes, five tola gold and motorcycle to accused No. 1. After marriage, accused used to beat his daughter for demand of Rs. 1,00,000/-, same was informed to him by his daughter on phone message. He, Raghav Narwade had been to the house of accused and they called Rambhau Gund, Waman Gate and others who were the mediators in the marriage. At that time, mother, maternal uncle and grand father of accused were present. Accused No. 1 and his father were out of the house. Rambhau talked with accused No. 1 on phone. After some time accused No. 1 came home. They tried to convince accused but in vain. He refused to maintain Rohini. They all started taking Rhoini to her maternal home. Then they went to outpost at Padoli. He again called Rambhau in the police station. He called Waman Gate. Accused No. 1 and 2 also came to the police station. He, his companion and police personnel convinced accused No. 1 and 2. Accused No. 1 before police gave in writing that he will maintain Rohini nicely. At the

same time his daughter has also given in writing before police. On the same day accused No. 1 Amol took Rohini to Padoli. Then they left for their native place. On the second day incident occurred. He narrated the incident as as been narrated by Rohini (PW3). Rambhau called him at about 8-8.30 pm and informed about the incident. He rushed to Civil Hospital, Osmanabad where his daughter was admitted. He found injuries on the head of Rohini and she was unconscious. He waited along side his daughter. On the second day he lodged FIR (Exhibit-18) with the police. His statement was recorded under section 164 Cr.P.C.

29. In cross examination he has stated that his daughter has passed out B.A. Second year. Rambhau Gund is related to him and accused. Accused No. 1 Amol is agriculturist. He denied the suggestion that financial condition of the accused is sound.

30. PW9 Rambhau Gund, was the mediator in the marriage of Amol and Rohini. He has deposed that he was the mediator in the marriage of Rohini and Amol. There were quarrel between Amol and Rohini after marriage. Rohini had called her father. There were two meetings between family of accused and Rohini and on both occasion he was present. In the first meeting he convinced accused and Rohini along with their family not to

raise quarrel. At second meeting on receiving phone call from Rohini her father had come. At that time he was called by Rohini's father. They all had gone to the house of accused. At that time accused No. 1 had gone to the field and accused No. 2 to another village. After he called accused no. 1 Amol he came back. He then asked Amol about quarrel. On that day Amol told them that he will not allow Rohini to co-habit. He and other four members from the village tried to convince Amol but in vain. Rohini, her father and other persons who had gathered there went to police out post Padoli. Police advised them to settle their issue interse. Police asked him and Waman Gate and 3-4 persons along with accused No. 1 and accused No. 2, to come to police station. In the police station writings were taken from accused and Rohini. He and other panchas signed on those writings (Exhibit-32 and 33). Thereafter, Amol took Rohini along with him and went to his home and father and other relatives of Rohini returned to their native place.

31. Next day around 8.30 to 9 O'clock, he received call from Padoli Police Patil informing him that accused No. 1 had killed his wife by pelting stone on her. He made phone call to his son, brothers and some others in the village and informed the

said fact. Thereafter, he along with some villagers went to the field of accused and took search of Rohini. It was sugarcane field. Rohini was found lying on the khodava sari thereof (vertical trench). There was injury on her head and blood was visible. A stone containing blood was lying beside her. Ear purni and zoomka were also lying near her. Blood was found on khodava and dry leaves (pachat) thereof. They found some movement in the stomach of Rohini at that spot. She was unconscious. They took her to Civil Hospital, Osmanabad. Thereafter, he made phone call to her father and they came in the hospital and thereafter her father lodged FIR at Bembli Police Station. Thereafter, Rohini was shifted to Latur.

32. He showed the spot of incident to police. He identified the articles seized on the spot vide panchnama (Exhibit-61). His statement (Exhibit-66) was recorded under section 164(5) Cr.P.C.

33. In cross examination he has stated that Rohini's father is his cousin i.e. son of sister of his mother and due to that relation he was mediator of marriage between Rohini and Amol. Accused persons are from his brotherhood (bhavki). He was not able to tell dates of two meetings. When he was at

Osmanabad he received phone call from Police Patil Dhananjay Gund. Police Patil is alive and resides in the villages. He denied the suggestion that he did not inform anyone about the incident since police Patil informed him. He stated that he has not told police on duty at Civil Hospital, Osmanabad about alleged act of accused No. 1 which was told to him by the Police Patil.

34. PW11 is PSI Nandkumar Dande, who is investigation officer, who conducted investigation of Crime No. 40/2016. He has proved clothes seizure panchnamas of accused No. 1 Amol (Exhibit-80, 81 and 82). After completion of investigation he filed charge sheet.

35. In cross examination he admitted that he had not recorded statement of Police Patil, Padoli. He admitted that incident is dated 07.03.2016 whereas first statement of injured was recorded on 20.03.2016, at hospital at Latur. He did not visit hospital in between 09.03.2016 to 20.03.2016. He admitted that accused persons were arrested on 07.03.2016. He denied rest of the suggestions given by the defence.

36. On careful scrutiny of evidence on record it is clear that injured Rohini is truthful witness. She has described the

incident in which she was attacked and the manner in which accused persons have committed crime. She has disclosed the role played by each accused. As per her evidence accused No. 2 and 3 caught hold of her both hands and accused No. 1 Amol has assaulted her with heavy stone weighing 4.700 kg (article No. 8). Injury certificates also supports the prosecution case and corroborates evidence of PW3. Article No. 8 is a heavy stone which is used by Amol for assaulting Rohini which has caused two fracture injuries on her head which is a vital part. PW2 and PW4 have categorically deposed that injuries sustained by Rohini were sufficient in ordinary course to cause her death. Multiple injuries received by Rohini also falsify the defence version coupled with the fact that purni and zoomka (ear ornament) were found lying on the spot. Blood stains found on the clothes of Amol further supports the prosecution case. Rohini was unconscious for almost 7-8 days from which the gravity of assault can be judged. In the written statement filed under section 313 Cr.P.C., accused persons have stated that since they took Rohini to hospital at that time their clothes got blood stains, this also is unacceptable, as Rohini was taken to hospital by PW9 and not by accused persons.

37. Spot Panchnama (Exhibit-60) further supports the prosecution case. It is necessary to note here that spot panchnama belies the defence of the accused that Rohini slipped on the leaves of sugarcane and due to fall she received injuries. Blood was found accumulated at one place and stone used for assaulting Rohini was found at some distance from that spot. Had Rohini slipped and fell on the stone then blood would have found accumulated beneath the stone and not at some different spot. The defence raised by accused is that Rohini slipped and had fallen on the stone due to which she suffered injuries and thereafter they took her to hospital is unacceptable.

In the defence accused persons have admitted that they were present on the spot at the time of incident and Rohini slipped over dry leaves of sugarcane (pachat) and due to fall her head hit the stone. They have further stated that they took her to hospital. It is thus clear from the evidence on record that the accused persons have admitted their presence at the time of incident. However, their contention that they took Rohini to hospital is not acceptable in view of evidence of PW9.

38. In evidence of PW9 it has come on record that in receipt of call from Police Patil he went to the field along with

others at about 8-8.30 pm on 07.03.2016 and they found Rohini lying in the pool of blood in conscious condition. He therefore with the help of villagers shifted Rohini in Civil Hospital and informed her father about the incident. This part of his evidence when he searched for Rohini and after he along with villagers found her lying in unconscious condition and she was shifted to hospital by them is not shattered in the cross examination. The defence could not elicit any favorable admission from this witness so as to disbelieve his version. Therefore, defence as is raised by accused persons is apparently false and unacceptable.

39. Both the medical officers have specifically submitted that one Ramakant Narwade as given history of assault while admitting Rohini.

40. It is also argued by defence that in view of compromise between the parties and the writings (Exhibit-32-33) Rohini had condoned earlier ill treatment meted out to her. Even if this is accepted for the sake of argument, fact remains that Amol was reluctant to co-habit with Rohini as PW1, Rambhau and others could not convince him when they had been to the house of accused. It is only after the intervention of police from Padoli outpost that writings (Exhibit-32 and 33) were

executed and Amol agreed to co-habit with Rohini. Evidence further indicates that Rohini was all along willing to co-habit with Amol. In this view of the matter, Rohini had no occasion to falsely implicate the accused persons as she had her genuine desire to co-habit with Amol.

41. Evidence of (PW3) Rohini inspires confidence and is believable. Merely because there is delay in recording her statement that by itself would not render the entire prosecution case doubtful. Delay is explained in the evidence to the effect that initially on 07.03.2016 vide (Exhibit-41), investigation officer asked medical officer as to whether Rohini is conscious and is able to give statement, on which endorsement was made (Exhibit-47) that she is not in a position to give the statement. Thereafter, letter dated 20.03.2016 (Exhibit-42), PW4 has given endorsement that she is in fit mental condition to give statement and according her statement was recorded on 20.03.2016. In this view of the matter, delay in recording statement is sufficiently explained.

42. Much is argued that Police Patil is not examined by the prosecution and therefore adverse inference needs to be drawn against the prosecution. Though it is a fact that Police

Patil has not been examined, however, evidence of PW9 who has reached on the spot on receiving information about assault on Rohini in the night and who shifted her to Civil Hospital and informed her father, sufficiently corroborates the prosecution case. Therefore, merely because Police Patil is not examined that by itself is not sufficient to create serious doubt about the prosecution case.

43. Learned advocate for accused argued that there are no blood stains found on the clothes of accused No. 2 and 3 and therefore their participation in the alleged crime is doubtful. I do not agree with this submission for the simple reason that as per the evidence of PW3 they both had caught hold her hands and made her fall down and then Amol assaulted on her head with stone. That means, they were holding her hands apart. This appears probable because if they were not holding hands of Rohini then she would have at least resisted the assault to some extent. However, this not the case. Accused No. 2 and 3 have facilitated the assault by Amol and therefore, they are equally liable as they shared common intention of accused No. 1.

44. The Trial Court has properly appreciated the evidence on record and was justified in convicting the accused persons by

passing a well reasoned order. Taking into consideration serious injuries inflicted on the head of Rohini, the Trial Court has rightly convicted the appellants under section 307 of IPC.

45. There is no merit in the submission of learned advocate for the appellants that accused can at the most be said to have committed offence under section 308 of IPC.

46. In Anandrao Hiware (supra) and Chagan Bankar (supra), it is held that '*cruelty envisaged in section 498A IPC requires constant harassment and torture with some persistence, causing reasonable apprehension in the mind of wife that living with her husband will be harmful or injurious to her.*'

47. In Harbeer Singh (supra), the Supreme held that '*delay in recording statements of witnesses creates doubt about credibility of witnesses if the delay is not explained.*'

In the case in hand delay is properly explained. Hence this ruling would not help the appellants.

48. In Takhaji Hiraji (supra), adverse inference was drawn against the prosecution for non examination of material witnesses.

In the present case for non examination of police patil, adverse inference is liable to be drawn against the prosecution is the submission of learned advocate for the appellants, however, since injured Rohini herself has deposed about injuries inflicted on her by accused persons in furtherance of their common intention, there is no propriety in drawing adverse inference.

49. In Reena Hazarika (supra), it is held that '*defence of accused under section 313 Cr.P.C. must be considered by the Court.*'

There cannot be any dispute about the said proposition. However, in the present case defence of the accused is considered and held to be unacceptable by the Trial Court as well as by this Court. On the contrary, defence is found to be false and it needs to be therefore held against the accused.

50. In Shanabhai Parmar (supra) having regard to the peculiar facts and circumstances and considering the fact that the appellant therein was prosecuted for offence after a period of about 14 years, the sentence was reduced to two years rigorous imprisonment.

In Baj Singh (supra) parties had indulged in brick bat and causing injuries to each other and therefore sentence of four years rigorous imprisonment was reduced to that of two years. Both these rulings can be distinguished on facts.

51. The argument of learned advocate for the appellants that harsh and excessive punishment is imposed on the appellants is also not acceptable. Section 307 of IPC provides that if any act is done by accused person with an intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder and if hurt is caused to any person by such act, the offender is liable either for imprisonment for life or such punishment as is mentioned in section 307 of IPC. In the facts of the present case and considering the injuries inflicted on the head of Rohini, punishment of ten years cannot be said to be harsh and excessive.

52. For the aforesaid reasons, there is no substance in the appeal. The appeal is therefore, dismissed.

[NITIN B. SURYAWANSHI, J.]